



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUNGOMA

Civil Misc Appli 366 of 2005

**IN THE MATTER OF AN APPLICATION BY HENRY WANYONYI MASINDE FOR LEAVE
TO APPLY FOR ORDERS OF JUDICIAL REVIEW**

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT NO.18 OF 1990

BETWEEN

REPUBLIC.....APPLICANT

VS

CHAIRMAN WEBUYE LAND DISPUTES TRIBUNAL.....RESPONDENT

EX-PARTE

HENRY WANYONYI MASINDE.....APPLICANT

AND

JOSEPH WAMALWA ONDIEKI.....INTERESTED PARTY

RULING

By an application by way of Chamber Summons dated 14th December 2005, pursuant to the provisions of Order LIII Rules 1 (1), (2) and (4) of the Civil Procedure Rules and section 8 and 9 of the Law Reform Act and all the other enabling provisions of the law, the applicant seeks orders:

- 1. That leave be granted to the ex parte applicant herein to move this honourable court for orders of certiorari to remove into this court and quash the decision of Webuye Land Disputes Tribunal which was read and adopted as judgment of the court on 8th November, 2005 in Webuye RMC vide Misc. No.110 of 2005.***
- 2. That the grant of leave aforesaid do operate as a stay of proceedings pending the hearing and determination of the substantive motion to be filed.***

3. That costs of this application be in cause.

The application is based on the grounds:

- a. That the Tribunal had no jurisdiction to arbitrate over title of a registered land.**
- b. That the tribunal acted in excess of jurisdiction by ordering the cancellation of the applicants title deed and the subdivision and transfer of the applicants land.**
- c. That the tribunal fell into error of law in entertaining a dispute that was for all intents and purposes offensive to section 3 of the Land disputes Tribunal Act.**
- d. That the tribunal acted in excess of jurisdiction in entertaining a matter relating to title and ownership of land.**

The application is predicated upon the annexed affidavit of Henry Wanyonyi Masinde sworn on the 14th December 2005 and a statement dated 14th December 2005 of Henry Wanyonyi Masinde.

For the applicant, it was argued that he is the registered owner of land parcel NO.BOKOLI/MISIKHU/991 having been registered in 20th March 2000. A copy of the register is annexed and marked "HW1".

That the said parcel of land was previously registered in the name of Mackenzie Ondiek Sumoni, since deceased.

That the applicant has been residing, ploughing and using the same for six years. That he bought the same in January 1998 from one Mackenzie Ondiek Sumoni at a cost of Ksh.289,000/= . That all formalities for purchase, transfer etc were complied with before the demise of the vendor (Mackenzie Ondiek). That all family members of the vendor were aware of the sale and transfer transaction.

That he was summoned to appear before the Webuye Land Disputes Tribunal which tribunal decided over the dispute which was adopted as a judgment of the court on 8th November 2005. See Exhibit "HWM3".

The thrust of the applicant's case is that the interested party does not stay on the land. Equally, the interested party has no legal right to the same. That the said award is a nullity for all intent and purposes.

That in any event, the interested party's claim fell outside the provisions of the Land Disputes Tribunal Act. Last but not least, that the tribunal had no jurisdiction to entertain the claim.

The applicant gave notice of the application to the Registrar and has equally lodged with the Registrar copies of the statement and affidavit in accordance with the provisions of Order LIII Rules 1(3) of the Civil Procedure Rules.

Mr. Makali for the applicant relied on the contents of the said affidavit and the statement.

At this stage so far as certiorari is concerned the onus is on the applicant to show by affidavit and statement that at least some of his rights have not been observed in some particular manner. That he has been unfairly treated which would be the subject of Judicial Review. That, the subject decision has been made by a judicial or quasi-judicial body.

The law relating to leave is now well settled. The application for leave "By Statement" – The facts relied on should be stated in the affidavit (**See R v. Wandsworth JJ Exp Read [1942] 1 K.B 281 – "The Statement"**) should contain nothing more than the relief sought, and the grounds which it is sought.

In case of certiorari, the leave shall not be granted, unless the application for leave is made not later than

six (6) months after the date of the proceedings or such shorter period as may be prescribed by any Act.

The decision complained of was adopted as a judgment of the court on 8th November 2005 vide Webuye RMCC NO.110/2005 and this application made on 15th December 2005. Hence this application was made within six(6) months after the date of the proceedings in accordance with the provisions of Order LIII Rule 2 of the Civil Procedure Rules.

Having analysed the affidavit in support and the accompanying statutory statement, I am persuaded that leave should be granted. Accordingly, there shall be orders in terms of prayer 1, 2 and 3 of the application.

By way of direction, the applicant shall file the Notice of Motion within 21 days from the date of this Order as prescribed by Order LIII Rule 3 of the Civil Procedure Rules.

DATED and DELIVERED at Bungoma this 22nd day of December, 2006.

N.R.O. OMBIJA

JUDGE

Mr. Makali for ex-parte applicant